

MARY ANN SMITH
Deputy Commissioner
DANIEL P. O'DONNELL
Assistant Chief Counsel
PAUL YEE (State Bar No. 142381)
Senior Counsel
MARLOU DELUNA (State Bar No. 162259)
Senior Counsel
KELLY SUK (State Bar No. 301757)
Counsel
Department of Business Oversight
One Sansome Street, Suite 600
San Francisco, California 94104-4448
Telephone: (415) 972-8544
Facsimile: (415) 972-8550
Email: Paul.Yee@dbo.ca.gov

Attorneys for the People of the State of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
Commissioner of Business Oversight,

Plaintiff,

v.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, d/b/a/ FedLoan

Defendant.

) CASE NO. 20-cv-03150-MMC

)

) **OPPOSITION OF PLAINTIFF TO**

) **MOTION OF DEFENDANT TO DISMISS**

) **COMPLAINT PURSUANT TO RULE**

) **12(b)(6)**

)

) **Hearing**

) Date: June 26, 2020

) Time: 9:00 a.m.

) Courtroom: 7

) Honorable Maxine M. Chesney

)

) Complaint Filed: April 1, 2020

) Complaint Removed: May 8, 2020

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1 **I. STATEMENT OF THE ISSUES TO BE DECIDED**

2 The California Department of Business Oversight (DBO¹) has a unique interest in examining
 3 Pennsylvania Higher Education Assistance Agency (PHEAA)'s servicing of the TEACH Grant
 4 reconsideration program under the recently enacted Student Loan Servicing Act (CSLSA).² A 2015
 5 U.S. Government Accountability Office (GAO) report and a 2018 U.S. Department of Education
 6 (Department) report show that between 2008 and 2018, PHEAA's servicing failures caused grants
 7 held by more than 10,000 TEACH Grant recipients to be erroneously and improperly converted into
 8 federal loans with interest. Because of PHEAA's servicing failures, the Department announced a
 9 TEACH Grant reconsideration program on December 2018, whereby recipients whose TEACH
 10 Grants were erroneously converted to loans could apply for reconsideration.

11 In 2016, the California Legislature enacted the CSLSA in response to this and other high-
 12 profile mismanagement in this sector of the financial marketplace. This action was undertaken
 13 pursuant to the state's police power to protect consumers and is comparable to regulation the state
 14 otherwise undertakes to regulate participants in the financial industry operating within California.
 15 Pursuant to that authority, DBO requested information and certain records of PHEAA, and PHEAA
 16 refused to comply with this request for information.

17 PHEAA has filed a motion to dismiss DBO's complaint, which the People of the State of
 18 California filed due to PHEAA's refusal to provide relevant documents and data relating to its
 19 administration of the TEACH Grant reconsideration program. This is a case of first impression on
 20 the narrow issue relating to PHEAA's servicing of the TEACH Grant reconsideration program. The
 21 question presented here is whether DBO is entitled to data and documents relating to the TEACH
 22 Grant reconsideration program under its inherent police powers to enforce consumer protections
 23 underlying the CSLSA.

24 PHEAA maintains that the complaint should be dismissed pursuant Rule 12(b)(6) because
 25 the CSLSA is invalid under the Supremacy Clause of the U.S. Constitution. None of the three
 26 grounds PHEAA identifies—1) obstacle preemption, 2) impossibility preemption, and 3)
 27 intergovernmental immunity—support dismissal of the complaint at this stage of the proceedings.
 28

First, the provisions of CSLSA at issue in this case do not inhibit implementation and execution of the loan programs authorized under the federal Higher Education Act (HEA), 20 U.S.C. §§ 1087a et seq. The complaint stems solely from DBO’s oversight of PHEAA’s handling of the TEACH Grant reconsideration program, and as such does not undermine the policies and execution of the reconsideration program, which DBO strongly supports. Furthermore, unlike the federal contractors in the cases upon which PHEAA relies, DBO’s document request is not an enforcement action, nor has it otherwise taken any other action against PHEAA’s license that prevents PHEAA from fulfilling its responsibilities as a federal contractor. Under applicable Ninth Circuit precedent, the mere burden on a federal contractor of responding to requests for information or inspections pursuant to state law is insufficient to trigger obstacle preemption.

Second, invoking impossibility preemption, PHEAA argues that compliance with both state and federal obligations would be a physical impossibility. The allegations and other information before the Court do not, however, support this contention. PHEAA can, in fact, comply with both the Privacy Act of 1974, 5 U.S.C. § 552a, and DBO’s request. Furthermore, PHEAA’s contract is not properly before this Court on this motion to dismiss, and, in any event, reinforces that PHEAA is expected to comply with applicable state law.

Third, under the doctrine of governmental immunity, PHEAA argues that the CSLSA directly regulates the federal government through its contractor. However, this argument misapprehends applicable case law—because CSLSA regulates all “persons” who service student loans, it does not directly regulate the federal government.

II. FACTS

A. The federal student loan landscape.

In an effort to expand access to higher education across the nation, the federal government enacted the Higher Education Act (20 U.S.C. §§ 1001–1155) in 1965. Under the Higher Education Act and related federal statutes and regulations, the U.S. Department of Education operates various

¹ Plaintiff agrees with PHEAA to be referred to as the DBO (Department of Business Oversight).

² California Financial Code §§ 28100 et seq. The act is known as the “Student Loan Servicing Act” but DBO will refer to it for this motion as “CSLSA” to maintain consistency with the moving papers.

1 programs to help students finance post-secondary education. (*Pub. L. No. 89-329, 79 Stat. 1219*).
 2 These include two main federal student loan programs: The Federal Family Education Loan Program
 3 (“FFELP”) (*20 U.S.C. §§ 1071–1087.4*), a system of loan guarantees intended to encourage private
 4 lenders to lend money to students, and the William D. Ford Federal Direct Loan Program (“Direct
 5 Loans”) (*20 U.S.C. §§ 1087a–1087j*), through which the federal government lends money to
 6 students directly. In 2010, Congress passed the Student Aid and Fiscal Responsibility Act, which
 7 ended new loan originations under the FFELP and shifted new loans primarily to Direct Loans. As a
 8 result of these programs and laws, the federal government now makes, owns, or guarantees 92
 9 percent of all student loans in the United States. Compl. ¶ 11.

10 In 2007, under the federal College Cost Reduction and Access Act (*20 U.S.C. § 1070 et seq.*),
 11 Congress established the Teacher Education Assistance for College and Higher Education (TEACH)
 12 Grant Program to aid and incentivize highly qualified teachers to pursue teaching careers in low-
 13 income, underserved communities without incurring crippling student loan debt. Compl. ¶ 13

14 Under the TEACH program, TEACH Grants of up to \$4,000 per year are awarded to students
 15 pursuing an undergraduate or master’s degree in education. To qualify, TEACH Grant recipients
 16 must display “high academic aptitude” by meeting certain minimum academic criteria as
 17 demonstrated through GPA or college admissions tests, and must agree to teach for at least four
 18 complete academic years within eight years after completing a course of study in a “high-need
 19 field,” such a mathematics, science, special education, or foreign language, in a low-income school.
 20 Compl. ¶ 14.

21 If the TEACH Grant recipient fails to complete the requisite service (teaching four years in a
 22 high-need subject in a low-income school) or otherwise fails to meet the eligibility criteria, the
 23 grants are converted into federal Direct Loans, which the recipient is obligated to repay with interest
 24 charges calculated back to the date each TEACH Grant was disbursed. Compl. ¶ 15.

25 In order to show ongoing compliance with the TEACH Grant program, recipients must
 26 submit annual certification to show they have completed a full school year of qualifying service.
 27 Failure to annually submit proper certification forms results in a conversion of the TEACH Grants to
 28 federal loans with interest. Compl. ¶ 16.

Under the Higher Education Act, the Department contracts out the servicing of federal student loans to private companies (such as PHEAA) who must, among other things, receive and apply periodic loan payments, maintain records, advise borrowers and handle repayment options, facilitate payoff, handle delinquent accounts, and administer loan forgiveness programs. (*See 20 U.S.C. § 1088, subd. (c); 20 U.S.C. § 1087f, subd. (a).*) Compl. ¶ 17.

From 2008, when the first TEACH Grants were awarded, through 2012, the Department contracted out the administration of the TEACH program to ACS, then a division of Xerox. In 2012, amid allegations of improper servicing practices, including the improper conversion of thousands of TEACH Grants into federal loans by ACS, the Department awarded the exclusive administration of the TEACH Grant program to PHEAA. Compl. ¶ 18.

B. PHEAA and the TEACH Grant Program

PHEAA services federal student loans and administers federal loan programs under the name FedLoan Servicing. PHEAA manages over a quarter of the nation's \$1.4 trillion student loan debt on behalf of various lenders for millions of borrowers nationally. As of December 2018, PHEAA services the loans of over 900,000 California student loan borrowers, amounting to over \$35 billion in student loan debt with an average balance of \$37,000. Compl. ¶ 20.

After assuming exclusive responsibility for administering the TEACH Grant program, PHEAA continued the mismanagement of its predecessor ACS by failing to timely and properly process teachers' annual certification forms and failing to provide teachers sufficient time to resubmit or correct forms when additional information was required. As a result, teachers who believed they had satisfied all their administrative obligations of submitting certifications for their TEACH Grants had their grants erroneously converted into federal loans. Compl. ¶¶ 21-22.

Between 2008 and 2018, misadministration of the TEACH Grant program and servicing failures have caused grants held by more than 10,000 TEACH Grant recipients to be erroneously and improperly converted into federal loans with interest. (U.S. Government Accountability Office, *Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes* (Feb. 24, 2015), available at <http://www.gao.gov/products/GAO-15-314>; U.S. Department of Education, *Study of the Teacher Education Assistance for College and*

1 *Higher Education (TEACH) Grant Program* (March 2018), available at
 2 <http://www2.ed.gov/rschstat/eval/highered/teach-grant/final-report.pdf>.) Compl. ¶ 23.

3 In December 2018, after more than a year of public scrutiny and amidst pressure from the
 4 media, advocates, and federal lawmakers, the Department acknowledged the erroneous TEACH
 5 Grant-to-loan conversions and announced a TEACH Grant reconsideration program, in which
 6 recipients whose TEACH Grants were erroneously converted to loans could apply for
 7 reconsideration. TEACH Grant reconsideration process, available at
 8 <https://studentaid.gov/understand-aid/types/grants/teach/teach-reconsideration>. Despite PHEAA's
 9 role in the mismanagement of the TEACH Grant servicing in 2012 and mismanaged at least a
 10 portion of TEACH Grants, the Department designated PHEAA to administer the reconsideration
 11 process. Without any additional accompanying oversight by the Department of the reconsideration
 12 program, PHEAA was left to implement its own policies and procedures around this remediation.
 13 Compl. ¶¶ 25-26.

14 Since the Department's 2018 announcement that PHEAA will administer the reconsideration
 15 program, neither PHEAA nor the Department released public information identifying the success of
 16 this initiative or assessing the number of teachers who continue to repay TEACH Grants that were
 17 erroneously converted into loans. Compl. ¶ 27.

18 As a result, DBO does not know how many of the approximately 10,000 TEACH Grant
 19 reconsideration candidates in California have had their loans denied reconversion back into grants or
 20 what criteria was used to assess the reconsideration process.

21 **C. California's Student Loan Servicing Act**

22 The CSLSA was signed into law in 2016 and became operational on July 1, 2018. In
 23 enacting the CSLSA, the California Legislature found and declared that "student loan debt is a
 24 national crisis" and highlighted the paramount interests of over 4,000,000 California student loan
 25 borrowers, and the imperative need for state oversight of student loan servicers, who serve as a
 26 "critical link between borrowers and lenders in managing accounts, proceeding payments, and
 27 communicating directly with borrowers." The Legislature also noted there is "no consistent, market
 28 wide federal standards for student loan servicing." (*Id.* at subdivision (a)-(d).) Compl. ¶ 31.

1 California has an immense interest in making sure California student loan borrowers are
 2 protected from harmful and abusive practices. As of the end of 2018, Californians owed \$133
 3 billion in student loans, more than double the amount owed one decade earlier. In 2017, 50 percent
 4 of California students graduated from college with student loan debt, and those students owed an
 5 average of nearly \$22,785 each. Compl. ¶ 32.

6 The CSLSA applies to all persons that manage or “service” student loans in California,
 7 designates the DBO to administer and enforce its provisions, and has three primary components: (i)
 8 licensure; (ii) examination; and (iii) enforcement. (Fin. Code, § § 28100, 28102, et seq.) Compl. ¶
 9 33. The CSLSA broadly defines “student loan” to mean “any loan made solely for use to finance a
 10 postsecondary education and costs of attendance at a postsecondary institution” (Fin. Code, §
 11 28102, subd. (m)(1).) This definition encompasses both private student loans made by commercial
 12 institutions, such as banks, credits unions, and other types of lending institutions, and federal student
 13 loans. PHEAA became licensed with the Department on November 5, 2018 and therefore
 14 voluntarily availed themselves to the CSLSA. Compl. ¶34.

15 **D. California’s standard examination of PHEAA’s servicing process.**

16 DBO scheduled an on-site joint standard examination of PHEAA’s loan servicing process on
 17 the weeks of January 13, 2020 and February 3, 2020, in conjunction with the Consumer Financial
 18 Protection Bureau and the Connecticut Department of Banking. Compl. ¶ 37.

19 On December 12, 2019, in anticipation of the upcoming on-site examination on January 13,
 20 2020, the DBO sent to PHEAA an examination request list requesting information, documents and
 21 complaints surrounding the TEACH Grant program. See Declaration of Paul Yee, (Yee Decl.),
 22 Ex.1, Supplemental Information Request List. Compl. ¶ 38. PHEAA did not provide the data.

23 On January 13, 2020, and again on February 3, 2020, the DBO conducted an on-site
 24 examination of PHEAA, and again requested the TEACH Grant information and documents.
 25 PHEAA again declined to produce the requested information on both visits. Compl. ¶ 40.

26 On February 6, 2020, PHEAA provided a written response to the Commissioner, declining to
 27 produce the requested TEACH Grant documents and information; PHEAA cited two separate bases
 28 for its refusal. First, PHEAA asserted that the DBO’s examination authority under the California

1 Student Loan Servicing Act was preempted by the federal Higher Education ACT (HEA). Second,
 2 PHEAA stated that the student borrower records, while in its physical possession, are legally owned
 3 by the Department, and PHEAA is prohibited from releasing them to the DBO pursuant to its
 4 contract with the Department and the federal Privacy Act of 1974 (“The Privacy Act”) (5 U.S.C. §
 5 552a *et seq.*). Yee Decl. Ex. 2, February 2, 2020 email. In their opinion, PHEAA explained that
 6 they were expressly prohibited from sharing the TEACH Grant data or documents with any state
 7 regulator and in support of their position, attached the Department’s December 27, 2017 memo,
 8 “Ownership of and Access to U.S. Department of Education Records and Data” (Memo) Yee Decl.
 9 Ex. 3, Memorandum. PHEAA also directed DBO to seek the information directly from the
 10 Department.

11 On February 13, 2020, pursuant to instruction contained in the Memo, the DBO by Senior
 12 Counsel William Horsey, wrote to the Department requesting the data and documents related to the
 13 TEACH Grant program including information relating to the reconsideration program. The DBO
 14 explained that request was pursuant to the law enforcement exception to the Privacy Act of 1974, 5
 15 U.S.C. § 552a(b)(7)³. Yee Decl. Ex. 4, February 13, 2020 Horsey Letter.

16 On April 24, 2020, the Department replied indicating that it would not provide the data and
 17 documents pursuant to the law enforcement exception because the Department is not a licensee, but
 18 more importantly, because the Department determined that the state law regulating Direct Loan
 19 servicing are preempted by Federal law. Yee Decl. Ex. 5, PHEAA letter. The Department’s letter
 20 cited as authority its own Preemption Notice found at 83 Fed.Reg. 10620. Yee Decl. Ex. 6, March
 21 12, 2020 Preemption Notice.

22
 23 ³ The Privacy Act, U.S.C. § 552a(b) provides in pertinent part: “No agency shall disclose any
 24 record which is contained in a system of records by any means of communication to any person, or
 25 to another agency, except pursuant to a written request by, or which the prior written consent of, the
 26 individual to whom the record pertains, unless the disclosure of the record would be . . . (7) to
 27 another agency or to an instrumentality of any governmental jurisdiction within or under the
 28 control the United States for a civil or criminal law enforcement activity if the activity is authorized
 by law, and if the head of the agency or instrumentality has made a written request to the agency
 which maintains the record specifying the particular portion desired and the law enforcement activity
 for which the record is sought.”

E. The Complaint

On April 1, 2020, DBO filed a lawsuit against PHEAA containing two causes of action in Superior Court for the County of San Francisco relating to the examination and a list of questions sought out in connection with that examination.

The first cause of action is for a preliminary and permanent injunction to compel PHEAA to file reports relating to the TEACH Grant reconsideration program as required under Financial Code § 28130, subdivisions (b), (c) and (d), which DBO requested pursuant to its authority under Financial Code § 28108.

The second cause of action is for a declaratory judgment pursuant to Civil Code § 1060, for the Court to declare the legal rights and duties of the parties herein under the CSLSA and specifically with rights and duties as it relates to data about the TEACH Grant reconsideration program. The complaint seeks a declaration: (1) that defendants must comply at all times with all provisions of the CSLSA, which includes but is not limited to, the power to conduct investigations and examinations of documents, books and records relating thereto, require reporting of all student loan servicing activity in the state of California, including federal loans and (2) pay an annual pro-rata assessment of the proportion of defendants' servicing activities in California as levied by the Commissioner.

On May 8, 2020 PHEAA removed this matter to Federal District Court. See Doc. 1.

III. OBJECTION TO INTRODUCING PHEAA's CONTRACT IN SUPPORT OF PHEAA's MOTION TO DISMISS

PHEAA submitted redacted excerpts of the PHEAA's contract⁴ with the Department (contract) as Exhibit A to the Declaration of Thomas F. Burke in Support of Defendant PHEAA's Motion To Dismiss. The Court should not rely on those excerpts, which are beyond the scope of the complaint and not properly subject to judicial notice, at this stage of the proceedings.

Generally, unless the court converts the Rule 12(b)(6) motion into a motion for summary judgment, it cannot consider materials outside the complaint. Although a court can augment the

⁴ DBO does not have nor is it aware of any other entity that has a complete copy of the contract.

facts with “data points gleaned from documents incorporated by reference into the complaint, matters of public record, and facts susceptible to judicial notice,” *Haley v. City of Boston* 657 F.3d 1031, 1038 (1st Cir. 2011), the contract is not attached to the complaint, no portion of the contract is incorporated into the complaint, and the contract’s terms are plainly not a matter of public record, *see supra* at n.4. Neither the complaint’s passing references to PHEEA’s status as a contractor with the Department nor the reference to a “loan servicing agreement” in PHEEA’s email attached as Exhibit B to the complaint (Doc.1) are sufficient to incorporate the contract’s specific terms into the complaint. *See Coto Settlement v. Eisenberg* 593 F.3d 1031, 1038 (9th Cir. 2010) (holding that “mere mention is insufficient to incorporate the contents of a document”); *see also* O’Connell & Stevenson, RUTTER GROUP PRAC. GUIDE: FEDERAL CIV. PRO. BEFORE TRIAL (The Rutter Group 2019) 9:212.1a. Indeed, the contract’s terms are not central to DBO’s claims, which center on DBO’s inherent police powers over consumer protection.

PHEEA’s inclusion only of redacted excerpts from the contract underscores the problem with PHEEA’s attempted reliance on this extrinsic evidence in several ways. First, DBO is uncertain as to the authenticity of the contract because PHEEA has not disclosed the contract in its entirety. *See*, O’Connell & Stevenson, RUTTER GROUP PRAC. GUIDE: FEDERAL CIV. PRO. BEFORE TRIAL (The Rutter Group 2019) 9:212.1a. Second, DBO is uncertain whether PHEEA may be withholding additional contract terms that allow compliance with DBO’s requests and may even require PHEEA to comply with state law or court order relating to release of the requested information. Civil discovery ensures that parties are on equal footing as to the facts in order to fully argue the legal merits. Reliance on potentially disputed factual material beyond the scope of DBO’s complaint at the motion to dismiss stage would unduly prejudice DBO’s interests, particularly when they are selective excerpts of a contract in the exclusive possession of PHEEA.

IV. LEGAL STANDARD

Although “detailed factual allegations” are not necessary to withstand a Rule 12(b)(6) motion to dismiss, the complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 [internal cites omitted] (2009). *See also*, *Student Loan Servicing Alliance (SLSA) v. Taylor*, 351 F.Supp.3d 26, 43 (2018)

Further, in deciding a motion to dismiss, the court must accept as true all the factual allegations contained in the complaint and construe them in the light most favorable to the plaintiff. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 [internal cites omitted] (2002); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

V. ARGUMENT

The CSLSA requires DBO to license student loan servicers in California and conduct oversight of licensees. This is similar to DBO's responsibility to license and conduct oversight of other financial entities, a traditional exercise of the state's police powers. Accepting as true the allegations in the complaint, neither the CSLSA generally nor DBO's notice of inspection to PHEAA create an obstacle to the operation of the federal loan programs authorized under the HEA, make it impossible for PHEAA to comply with its obligations under federal law, or directly regulate the federal government. Accordingly, PHEAA's motion to dismiss should be denied.

A. The CSLSA is not preempted by the HEA.

The Supremacy Clause vests in Congress the power to preempt state laws. *Arizona v. United States*, 567 U.S. 387, 399 (2012). "Federal preemption occurs when: (1) Congress enacts a statute that explicitly pre-empts state law; (2) state law actually conflicts with federal law; or (3) federal law occupies a legislative field to such an extent that it is reasonable to conclude that Congress left no room for state regulation in that field." *CTIA - The Wireless Ass'n v. City of Berkeley*, Cal., 928 F.3d 832, 849 (9th Cir. 2019). The second category is often referred to as conflict preemption, and PHEAA invokes two variants of it: obstacle and impossibility preemption.⁵

Any preemption inquiry is "guided by two cornerstones." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). First, Congressional purpose is the "ultimate touchstone in every preemption case." *Id.* "Congress' intent, of course, primarily is discerned from the language of the pre-emption statute and the 'statutory framework' surrounding it." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996) (quoting *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 111, 112 (1992) (Kennedy,

⁵ PHEAA does not argue Congress explicitly pre-empted state law, nor does it assert field preemption here. In any event, the Ninth Circuit has "previously held that field preemption does not apply to the HEA." *Chae v. SLM Corporation*, 593 F.3d 936, 941-42 (9th Cir. 2010).

J., concurring in part and concurring in judgment)). Second, there is an assumption that the historic police powers of the state have not been superseded unless that was the “clear and manifest purpose of Congress.” *Wyeth*, 555 U.S. at 565; *see also Knox v. Brnovich*, 907 F.3d 1167, 1173-74 (9th Cir. 2018).

1. The Presumption Against Preemption Applies to the CSLSA

Consumer protection is an area that traditionally has been regulated by the states. *See California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *see also Chae v. SLM Corp.*, 593 F.3d 936, 944 (9th Cir. 2010). Consumer protection is baked into the CSLSA. See Notes to Finance Code § 28100(f) (“It is the intent of the Legislature to promote all of the following: (1) Meaningful access to federal affordable repayment and loan forgiveness benefit. (2) Reliable information about student loans and loan repayment options. (3) Quality customer service and fair treatment.”). These purposes are the hallmarks of consumer protection. Accordingly, the presumption against preemption and requirement that Congress express a clear and manifest purpose to displace state law apply here.

2. Congress did not clearly and manifestly express an intent to preempt the CSLSA

Conflict preemption arises 1) when the state regulations stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress (obstacle) or 2) when compliance with both the federal and state regulations is a physical impossibility (impossibility). *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985). “Mere possibility of inconvenience is not a sufficient obstacle – the repugnance must be so direct and positive that the two acts cannot be reconciled or consistently stand together.” *United States v. California*, 314 F.Supp.3d 1077 (E.D. Cal. 2018). Furthermore, unlike in express or field preemption where the laws are considered in their entirety, conflict preemption requires a court to undertake a more detailed analysis to identify *actual* conflicts between the federal and state law. *SLSA v. Taylor*, 351 F.Supp.3d 26, 61. Finally, the conflict preemption analysis “does not justify a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives; such an endeavor would undercut the principle that it is Congress rather than the courts that preempts state law.” *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (plurality opinion) (internal quotation

omitted); accord *United States v. California*, 921 F.3d at 879. “[E]vidence of pre-emptive purpose, whether express or implied, must therefore be sought in the text and structure of the statute at issue.” *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1907 (2019).

Here, PHEAA invokes both types of conflict preemption. Under Ninth Circuit precedent, however, neither applies.

a. Obstacle preemption does not apply.

Obstacle preemption exists where state regulations stand as an obstacle to the accomplishment and execution of the full purposes and objective of Congress. *Hillsborough County*, 471 at 713. PHEAA’s arguments that CSLSA is an obstacle to the HEA overlooks applicable Ninth Circuit authority and glosses other material factual differences between this case and the cases upon which PHEAA relies.

As initial matter, PHEAA argues that the CSLSA (which has similar standards in its licensing analysis as in the HEA) is an obstacle to HEA, asserting that the state law allows “the DBO to usurp the selection of federal contractors delegated to the Department by Congress.” Def. MPA pg. 15:23-24. To the extent PHEAA maintains CSLSA is an obstacle to the HEA simply because it is a parallel state regulatory scheme, this argument fails. To be sure, under *field* preemption, state laws that parallel federal laws are impermissible since field preemption reflects a congressional decision to foreclose any state regulation in the area. *See Arizona v. United States*, 567 U.S. 401. But that is not the law for conflict preemption. Instead, conflict preemption applies to a parallel state law only if it is an obstacle to the purpose of federal law or makes it impossible to comply with federal law. Indeed, in other legal fields, such as civil rights and criminal law, to list a few, both federal and state laws coexist and state oversight is not preempted. In the field of securities regulations (e.g. shares in a business), federal and state statutes govern the offers and sales of securities simultaneously. Securities are regulated under federal law, the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., and under California law, Corporate Securities Law of 1968, Corporations Code §§ 25000 et seq. Nothing in CSLSA itself purports to limit the ability of companies like PHEAA to contract with the federal government under the HEA or to allow DBO to substitute its

1 judgment for the Department's contracting decisions under the HEA in a way that facially create an
2 obstacle to achieving the federal purpose.

3 PHEAA points to *Leslie Miller* and its progeny for the proposition that any state licensing
4 law is preempted with respect to federal contracts. The Ninth Circuit, however, has not endorsed the
5 expansive reading of the *Leslie Miller* line of cases that PHEAA advances, and the factual
6 circumstances of the present action align, not with *Leslie Miller* and its progeny, but with cases
7 where the Ninth Circuit held obstacle preemption did not apply. This is particularly true at the
8 pleadings stage, where PHEAA has presented no evidence of how compliance with DBO's
9 information request will *actually* undermine its ability to fulfill its duties as a loan servicer.

10 In *Leslie Miller Inc. v. Arkansas*, 352 U.S. 188-90, the federal government contracted with a
11 construction contractor to build facilities at an Air Force base in Arkansas. The contractor did not
12 have a state issued construction contractors license. The state law prohibited even the act of bidding
13 on a project without a state issued license. The state contracting authority filed an information
14 against the contractor, and a fine imposed after a finding of guilt was upheld in state court.
15 However, the U.S. Supreme Court in reversing the state court's ruling affirming the penalty, held
16 that subjecting a federal contractor to the state licensing board "would give the state a virtual power
17 of review over the federal determination of responsibility and would thus frustrate the expressed
18 federal policy of selecting the lowest responsible bidder." *Id.* at 190.

19 In *Gartrell Constr. Inc. v. Aubry*, 940 F2d 437, 439 (9th Cir. 1991), the Ninth Circuit applied
20 *Leslie Miller* to a federal contract for construction at the Marine Corp. Air Station El Toro in
21 California, where the selected contractor was not licensed by the state. The state law did not prohibit
22 bidding on projects but rather required licensure once the contract was awarded. The state fined the
23 contractor \$57,600 because the contractor failed to obtain a state issued contractor's license. *Id.* at
24 437. The Ninth Circuit found the Federal and California standards similar and affirmed the holding
25 of *Leslie Miller* stating, "[t]he similarity of factors makes clear that California, through its licensing
26 requirements, is effectively attempting to review the federal government's responsibility
27 determination. That review is prohibited by *Leslie Miller*."

1 The other cases cited by defendant similarly involve cases where the state took action or
 2 threatened to penalize a federal contractor for failure to obtain a state license or its equivalent. In
 3 *Sperry v. State of Fla. ex rel. Florida Bar*, 373 U.S. 379, 385 (1963) the state took action against an
 4 individual, who was not a member of the state bar, to prevent that person from practicing before the
 5 U.S. Patent Office. That individual had been practicing before the U.S. Patent Office for many years
 6 before the state action. In *United States v. Virginia*, 139 F.3d 984 (4th Cir. 1988), the state
 7 threatened to bring action against private security services – all former federal investigators - who
 8 had contracts with the F.B.I. to conduct federal background checks, to enjoin them from acting as
 9 investigators in the state and to penalize them for not having the appropriate state license. Some of
 10 the private security services reported that they would not perform the work for the F.B.I. rather than
 11 submit to the state private security licensing regime. This resulted in the specter of the F.B.I. losing
 12 manpower, which impeding the F.B.I.’s ability to perform background checks in the state and
 13 potentially negatively affected national security. In *United States v. Town of Windsor, Conn.*, 765
 14 F.2d 16 (2nd Cir. 1985), the building inspector for the Town of Windsor issued a stop work order
 15 against a federal construction contractor during the construction of two buildings at The Knolls
 16 Atomic Power Laboratory because the contractor had not obtain the necessary building permits from
 17 the building department.

18 As the Ninth Circuit has recognized, for obstacle preemption to apply (as a form of conflict
 19 preemption), the conflict must be an actual conflict, not merely a hypothetical or potential conflict.”
 20 *Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 863 (9th Cir. 2009), *aff’d sub nom.*
 21 *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582 (2011); *accord English v. Gen. Elec. Co.*,
 22 496 U.S. 72, 90 (1990) (“The Court has observed repeatedly that pre-emption is ordinarily not to be
 23 implied absent an ‘actual conflict.’” (citing *Savage v. Jones*, 225 U.S. 501, 533 (1912)); *Chamberlan*
 24 *v. Ford Motor Co.*, 314 F. Supp. 2d 953, 957 (N.D. Cal. 2014) (“Speculative or hypothetical conflict
 25 is not sufficient: only State law that ‘actually conflicts’ with federal law is preempted.”). All cases
 26 cited by PHEAA involve actions or actual imminent threat, either by fine or stop order by the state,
 27 that impeded the actual functioning of the federal government or its contractor in the furtherance of
 28 that contract. That is, there was actual harm to the contractor or impeded governmental functions in

those cases. That is not the case here: DBO has not moved to revoke PHEAA's license or issued a fine. DBO has instead simply requested records and information and initiated legal proceedings to obtain records, consistent with federal law and PHEAA's contract. There is no actual conflict here. DBO has not interfered with any contract rights between PHEAA and the Department. That is, without anything else, PHEAA can carry out its purpose under the contract and service student loan borrowers in California with or without regard to CSLSA.

To the extent PHEAA maintains the state licensing requirements generally, or DBO's specific request for information, are a burden that interfere with its contract, the Ninth Circuit has rejected this argument in analogous circumstances. *United States v. California*, 921 F.3d 865, 885-86 (9th Cir. 2019), involved a challenge by the federal government to state law that required federal contractors operating immigration detention facilities to submit to inspections and provide documentation to the California Attorney General. In declining to apply obstacle preemption, the Ninth Circuit examined *Leslie Miller* and its progeny and explained:

These cases evinced states' active frustration of the federal government's ability to discharge its operations . . . The law might require some federal action to permit inspections and produce data . . . but as California persuasively notes, "[M]ere collection of such factual data does not (and cannot) disturb any federal arrest or detention decision."

United States v. California, 921 F.3d at 885. As there was for the California Attorney General's activities with respect to immigration detention facilities, neither CSLSA nor DBO's request for information actively frustrate federal operations or impede PHEAA's ability to serve as a loan servicer.

PHEAA appears to suggest that it is burdened simply because it must obtain licensure under CSLSA and submit to examinations as to its federal loan portfolio. As to the first argument, PHEAA must obtain a student loan servicer license in California anyway since it also services non-federal loans. Because it is otherwise subject to the licensing requirement, that requirement cannot credibly be viewed as an obstacle to its performance under the federal contract. As to the second, the Ninth Circuit rejected a nearly identical argument in *United States v. California*, 921 F.3d at 885, that complying with state inspection and document requests are enough to trigger obstacle preemption.

PHEAA also points to two recent district court decisions addressing state regulation of student loan servicing, the *SLSA* decision and the *Perez* case, for the proposition that the mere threat of second guessing the federal government’s contracting decisions is sufficient under *Leslie Miller* to invalidate a state licensing schemes as applied to servicers when servicing federal loans. See *SLSA v Taylor*, 361 F.Supp.3d at 63.; *PHEAA v. Perez*, 3:18-cv-114 (MPS) at *9, 2020 WL 2079634 (D. Conn. April 30, 2020). First, these decisions did not cite or follow the Ninth Circuit authority discussed above, so their persuasive value is limited here. Second, these decisions rest on the mere potential for conflict, rather than actual conflict. The pronouncements in *SLSA* and *Perez* about potentials for conflicts is forward looking for a day that may never come. Nothing in *Leslie Miller* counsels the displacement of state law by speculative conflicts with federal law.⁶ Finally, extending *Leslie Miller* this far does ignores the requirement for an actual conflict before a state law is preempted. It also does not recognize the principle that “in the interest of avoiding unintended encroachment on the authority of the States ... a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find pre-emption.” *Sickle v. Torres Advanced Enter. Sols, LLC*, 884 F.3d 338, 346 (D.C. Cir. 2018). Therefore, viewed through the lens of presumption against preemption, PHEAA has not shown that it was Congress’ “clear and manifest” intent to block application of the CSLSA to federal loans, particularly where the State has not taken action to fine or otherwise interfere with PHEAA’s performance under its federal contract. *Medtronic Inc. v. Lohr*, 518 U.S. 470, 485 (1996).⁷

Indeed, PHEAA has not articulated how, in the specific context of the TEACH Grant reconsideration program, DBO’s request for information creates an obstacle to fulfilling PHEEA’s

⁶ Even if DBO denied or revoked PHEAA’s state license, PHEAA would still have its federal contract. Denial or revocation of a license does not cancel or frustrate the contract. Only if DBO moves to fine or penalize PHEAA for operating under the federal contract might a conflict potentially arise. Such a scenario is not before this Court. DBO does not, however, concede that such an enforcement action would in fact hinder the full purposes of the HEA.

⁷ Although PHEAA points to the DBO April 10, 2020 letter as evidence of an action, this letter merely points out PHEAA’s obligations under the state statutory scheme and is not analogous to interfering with PHEAA’s federal contract.

1 duties, which are to review requests to modify loans that were improperly converted back to grants.
 2 Indeed, it is difficult to imagine how requesting data and documents for the reconsideration program
 3 could interfere with the purposes of the TEACH Grant program, which are found at 20 U.S.C.
 4 §1070(a)(4) (“providing for special programs and projects designed (A) to identify and encourage
 5 qualified youths with financial or cultural need with a potential for postsecondary education, (B) to
 6 prepare students from low-income families for postsecondary education, and (C) to provide remedial
 7 (including remedial language study) and other services to students”).

8 Finally, under California’s inherent police powers over student loan servicers, DBO’s request
 9 to PHEAA for data and documents is not an obstacle to the purposes of the reconsideration program.
 10 In other words, DBO’s requests relating to the TEACH Grant reconsideration program is not a
 11 “second guessing” of the Department and does not frustrate the reconsideration program’s goals –
 12 which is to provide a path for student loan borrowers to have their erroneously converted grants that
 13 are now loans, reconverted from loans back into grants. Unlike the state entities in the *Leslie Miller*
 14 line of cases, DBO has not penalized a Federal contactor (in this case PHEAA) for non-compliance
 15 or moved to invalidate its license or otherwise supplant its judgment for that of the Department. All
 16 DBO is seeking is information about a program intended to remedy prior malfeasance. PHEAA has
 17 cited nothing in the “the text and structure of the statute at issue” that manifests a clear intent to
 18 preempt the exercise of the state’s historic police power to request such information from a business
 19 entities operating within state boundaries. *Warren*, 139 S. Ct. at 1907.

20 **b. Impossibility preemption does not apply.**

21 PHEAA’s invocation of impossibility preemption underscores that this matter is essentially a
 22 discovery dispute seeking judicial resolution that is premature on a motion to dismiss. DBO asked
 23 questions and requested documents under a state law that expressly authorized such requests, and
 24 that authorizes DBO to pursue a court order to obtain the requested information and records if
 25 necessary. PHEAA asserted that it could not provide the information because the Department
 26 instructed PHEAA to withhold the requested data. PHEAA now invokes the Department’s
 27 interpretation of the Privacy Act and PHEAA’s contract with the Department to support its position
 28 that it cannot release the information. Both of these reasons fail upon a closer examination.

1 The Privacy Act, 5 U.S.C. § 552a(4), covers “a group of any records under the control of
 2 any agency from which information is retrieved by the name of the individual or by some identifying
 3 number, symbol, or other identifying particular assigned to the individual.” The Privacy Act
 4 prohibits disclosure of personally identifying information (or PII) unless certain conditions exist.
 5 Through this action, DBO is seeks an order expressly contemplated under 5 U.S.C. § 552a(b)(11), a
 6 provision of the Privacy Act that allows disclosure of personal information without written consent
 7 of the individual to whom the record pertains “pursuant to the order of a court of competent
 8 jurisdiction.” Indeed, if successful, this action will result in an order to produce the relevant
 9 information, similar to a motion to compel production in response to a subpoena, and thus meeting
 10 the conditions for disclosure under the exemption.

11 Simply put, the Privacy Act does not make it impossible to comply with DBO’s examination
 12 requests. The Privacy Act does not create a discovery privilege that would shield this information.
 13 See *Laxalt v. McClatchy*, 809 F.2nd 885, 888-89 (D.C. Cir. 1987). In the student loan servicing
 14 context, no less than five cases in the last two years have held that a servicer cannot withhold
 15 documents based on Privacy Act concerns and each court ordered the discovery. *Consumer Finance*
 16 *Protection Bureau v. Navient* 3:17cv101, 2018 WL 3824367 (M.D. Pa. 2018) (holding that the
 17 Privacy Act does not create a discovery privilege.) Yee Decl. Ex 7. (See also *State of Washington v.*
 18 *Navient*, 17-2-01115-1 SEA, 2018; *Commonwealth of Pennsylvania v. Navient*, 3:17cv1814, 2018;
 19 *The People of the State of California v. Navient*, CGC-18-567732, 2019; *District of Columbia v.*
 20 *Navient*, 2019 CA 5086.) Yee Decl. Ex. 8-11.

21 PHEAA has pointed to the Department’s December 27, 2017 memo⁸ as a reason they cannot
 22 respond to the request for information. An agency administrator, however, is not empowered to
 23 _____

24 ⁸ The Department’s recent position on such compliance is contrary to its directives just 16 months
 25 earlier, when on July 20, 2016, the Department released a memorandum entitled “Policy Direction
 26 on Federal Loan Servicing” (the so-called “Mitchell Memo”) which directed that “[s]ervicing
 27 contractors should comply with federal and state law, taking any necessary steps to support oversight
 28 by federal and state agencies, regulators, or law enforcement officials.” Yee Decl. Ex. 12, Mitchell
 Memo. This cooperation was echoed in October of 2017, where the CFPB stated in its annual report
 that “[c]onsumers benefit when the student loan industry is subject to coordinated oversight by
 regulators at both the federal and state levels.” Yee Decl. Ex.13 , CFPB 2017 report.

1 speak for Congress by overriding an express exemption under the Privacy Act, thereby
 2 manufacturing a conflict with state law. It is circular, to say the least, to assert that a federal law
 3 makes it impossible to comply with a state law authorizing a state agency to obtain an order
 4 compelling production, when the federal law explicitly authorizes disclosure in response to such an
 5 order. The district court in *SLSA* recognized this in finding the Department's Preemption Notice, 83
 6 Fed.Reg. 10619-20, was a "retroactive, ex post rationalization for the [Department's] policy change"
 7 that represented "a stark unexplained change in the [Department's] position." *SLSA*, 351 F.Supp.3d
 8 26, 50. In any event, the Memo does not deserve any deference as it relates to PHEAA's
 9 impossibility defense here. In fact, the Memo is irrelevant since it does not address the exemption to
 10 the Privacy Act at issue here. Specifically, the Memo refers, as its basis, to the System of Records
 11 Notices (SORN) 81 Fed.Reg. 60686 (September 2, 2016) that prescribes the "routine use" disclosure
 12 under 5 U.S.C. § 552a(b)(3), and thus does not interpret 5 U.S.C. § 552a(b)(11), which the DBO's
 13 request is based on "pursuant to the order of a court of competent jurisdiction."

14 As discussed *supra* in Section III, the redacted excerpts of PHEAA's contract are extrinsic
 15 evidence not properly subject to judicial notice and are therefore not properly before this Court on a
 16 motion to dismiss. Nonetheless, even if considered, the excerpts do not support PHEAA's claim of
 17 impossibility. Most significantly, one excerpted portion of the contract requires PHEAA to comply
 18 with state law. (See MTD, Burke Decl. Ex. A "FSA 24-1 Release of Information Under The
 19 Freedom Of Information Act (Jan 2008), Document 11, pg. 12-13.) PHEAA therefore cannot hide
 20 behind its contract as a basis for refusing to comply with CSLSA, a state law which requires
 21 production of the information. Moreover, PHEAA has taken no steps to comply with *any part* of the
 22 request. PHEAA could have sought out authorization for release of the PII for the TEACH Grant
 23 recipients (or at least the ones who have had the grants converted to loans), provided documents
 24 redacting PII or supplied the data and documents that clearly do not implicate PII. DBO's request
 25 included, "policies and procedures, assessments of the effectiveness of the reconsideration process,
 26 data related to teach grants serviced, data relating to the number of California grants converted to
 27 _____
 28

1 loans, number of California loans reconverted to grant.” (Yee Decl. Ex. 1.) The responses to these
 2 categories of information do not ask for PII, which is the subject of the Privacy Act.

3 PHEAA can comply with the CSLSA and DBO’s examination request without violating the
 4 Privacy Act (and, to the extent considered, its contract, which appears to specifically require
 5 compliance with the Privacy Act and state laws). Moreover, it can hardly be said that congressional
 6 intent to supplant CSLSA is “clear and manifest” when: (1) the Privacy Act itself contemplates
 7 disclosure of PII in response the court order that DBO seeks here, and (2) the HEA does not
 8 expressly restrict disclosure of the records and information sought here.

9 **B. The CSLSA does not violate intergovernmental immunity principles**

10 Under the Supremacy Clause, a state may not “regulate[] the United States directly or
 11 discriminate[] against the Federal Government or those with whom it deals.” *North Dakota v. United*
 12 *States*, 495 U.S. 423, 435 (1990) (plurality opinion). Because the CSLSA is a law of general
 13 applicability that does not differentially target the federal government, its operations, or its
 14 contractors, PHEEA focuses only the “direct regulation” component of intergovernmental immunity.
 15 MTD at 21-22.

16 While the Supreme Court, at one time, invalidated a state regulation that made “it more
 17 costly for the Government to do its business,” the Court has since recognized that this “view has
 18 been thoroughly repudiated.” *Id.* at 434. Instead, the Court’s “modern-day treatment of the
 19 intergovernmental immunity doctrine has been marked by restraint[.]” *In re Nat’l Security Agency*
 20 *Telecomms. Records Litig.*, 633 F. Supp. 2d 892, 903 (N.D. Cal. 2007). The Court has taken “a
 21 functional approach to claims of intergovernmental immunity, accommodating of the full range of
 22 each sovereign’s legislative authority and respectful of the primary role of Congress in resolving
 23 conflicts between the National and State Governments.” *North Dakota*, 495 U.S. at 435.⁹

24
 25
 26 ⁹ For this reason, the notable majority of modern cases have involved claims alleging
 27 impermissible targeting of and discrimination against the federal government or its contractors. *See,*
 28 *e.g., United States v. California*, 921 F.3d 865, 882-85 (9th Cir. 2019) (petition for cert. filed) (state
 law alleged to impose more burdensome inspection requirements on facilities housing immigration
 detainees than facilities housing state prisoners); *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839-43

1 In arguing that the CSLSA violates intergovernmental immunity by directly regulating the
 2 federal government, PHEAA relies primarily on *Boeing Co. v. Movassaghi*, 768 F.3d 832, 836 (9th
 3 Cir. 2014). That case, however, illustrates why the CSLSA is not a direct regulation of the federal
 4 government. In *Boeing*, a private contractor was hired by the federal government to clean up the
 5 Santa Susana Field Laboratory, private parcel of land located in California, on which the U.S.
 6 Department of Energy had conducted nuclear research and rocket testing. *Id.* at 834-35. The Ninth
 7 Circuit invalidated California’s site-specific environmental clean-up statute, which prescribed
 8 standards for the Santa Susana Field Laboratory parcel that were more onerous than federal
 9 standards and defined the Department of Energy as a responsible party for the site. Accordingly, the
 10 statute purported to directly regulate the federal government by imposing conditions on a federal
 11 agency, as the responsible party, for cleanup of federal property. Here, in contrast, the CSLSA does
 12 not name the federal government, and instead applies only to private persons. Nor does the CSLSA
 13 purport to direct the work a federal contractor is performing on behalf of the federal government, as
 14 the statute in *Boeing* did by imposing more stringent cleanup standards than federal law, *see Boeing*,
 15 at 840. In fact, neither the CSLSA itself nor DBO’s inspection request interfere with PHEAA’s
 16 ability to discharge its contractual obligations consistent with the terms set out by the federal
 17 government.

18 While the CSLSA may tangentially affect the federal government and the servicing of federal
 19 loans because its contractors must operate consistently with state law, such an incidental impact is
 20 not a direct regulation of the federal government. Intergovernmental immunity does not insulate the
 21 federal government or those it seeks to do business with from any impact whatsoever from a state
 22 regulation of neutral applicability. *See North Dakota*, 495 U.S. at 435 (plurality) (“Whatever burdens
 23 are imposed on the Federal Government by a neutral state law regulating its suppliers are but the
 24 normal incidents of the organization within the same territory of two governments.”). This is true
 25

26
 27 (9th Cir. 2014) (state law imposing stricter cleanup standards on a single federal facility than on
 28 similar state facilities); *United States v. City of Arcata*, 629 F.3d 986, 991-92 (9th Cir. 2010) (local
 ordinance restricting speech of federal employees, and no one else).

1 because otherwise too many state laws would be supplanted based on “a judicially crafted doctrine
2 implied in the Constitution.” See, Rubenstein, Supremacy Inc., 67 UCLA L.Rev. 4 (2020) pg. 73-74.

3 **VI. CONCLUSION**

4 PHEAA’s motion should be denied as it should not be allowed to challenge the application of
5 CSLSA by way of motion to dismiss, after all this is not a motion for summary judgement.

6 Dated: June 3, 2020

7 MANUEL P. ALVAREZ
Commissioner of Business Oversight

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9 /s/ Paul Yee
10 PAUL YEE
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CERTIFICATE OF SERVICE

Case Name: *People of the State of California*
v.
Pennsylvania Higher Education
Assistance Agency

No. **3:20-cv-03150-MMC**

I hereby certify that on June 3, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OPPOSITION OF PLAINTIFF TO MOTION OF DEFENDANT TO DISMISS
COMPLAINT PURSUANT TO RULE 12(b)(6)**

**DECLARATION OF PAUL YEE IN OPPOSITION OF PLAINTIFF MOTION OF
DEFENDANT TO DISMISS**

**[PROPOSED ORDER DENYING MOTION OF DEFENDANT TO DISMISS
COMPLAINT PURSUANT TO RULE 12(b) (6)]**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 3, 2020, at San Francisco, California.

Jennifer Perez
Declarant

/s/ Jennifer Perez
Signature